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AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY MARCH 19, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 449**

**Introduced by Assembly Member Irwin**

**(Principal coauthor: Assembly Member Wilk)**

(Principal coauthors: Senators Hertzberg and Pavley)

**(Coauthors: Assembly Members Baker, Brown, Chávez,  
Cristina Garcia, Jones, Maienschein, Steinorth, and Waldron)**

(Coauthors: Senators Allen, Anderson, and Vidak)

February 23, 2015

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An act to add Sections 17140.4 and 23711.4 to the Revenue and Taxation Code, and to add Chapter 15 (commencing with Section 4875) to Division 4.5 of the Welfare and Institutions Code, relating to taxation, and making an appropriation therefor.

### LEGISLATIVE COUNSEL'S DIGEST

AB 449, as amended, Irwin. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on or after January 1, 2015, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, conform to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law and the Corporation Tax Law, as provided. The bill would also establish in state government ~~a Qualified ABLE Program and the ABLE Fund~~ *the ABLE program trust* for purposes of implementing the federal ABLE Act. The bill would create the ABLE Act ~~Board~~. ~~The bill would authorize the Able Fund to accept moneys from ABLE Accounts, to be segregated into the program account and the administrative account. The bill would continuously appropriate funds in the accounts to the board for specified purposes, thereby making an appropriation.~~ *Board and would authorize the board to adopt regulations to implement the program. The bill would create the program fund, a continuously appropriated fund, thereby making an appropriation, and the administrative fund, as specified.* The bill would require the ~~Treasurer~~ *Board* to administer the program in compliance with the requirements of the federal ABLE Act.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature to further the
- 2 purposes of the federal Stephen Beck Jr., Achieving a Better Life
- 3 Experience Act to ensure that people with disabilities may save
- 4 for the future to achieve greater independence.
- 5 SEC. 2. This act shall be known, and may be cited, as the
- 6 California Achieving a Better Life Experience Act.
- 7 SEC. 3. Section 17140.4 is added to the Revenue and Taxation
- 8 Code, to read:
- 9 17140.4. For taxable years beginning on or after January 1,
- 10 2016, Section 529A of the Internal Revenue Code, relating to

1 qualified ABLE programs, added by Section 102 of Division B of  
2 Public Law 113-295, shall apply, except as otherwise provided.

3 (a) Section 529A of the Internal Revenue Code is modified as  
4 follows:

5 (1) By substituting the phrase “under this part and Part 11  
6 (commencing with Section 23001)” in lieu of the phrase “under  
7 this subtitle.”

8 (2) By substituting “Article 2 (commencing with Section  
9 23731)” in lieu of “Section 511.”

10 (b) A copy of the report required to be filed with the Secretary  
11 of the Treasury under Section 529A(d) of the Internal Revenue  
12 Code, relating to reports, shall be filed with the Franchise Tax  
13 Board at the same time and in the same manner as specified in that  
14 section.

15 SEC. 4. Section 23711.4 is added to the Revenue and Taxation  
16 Code, to read:

17 23711.4. For taxable years beginning on or after January 1,  
18 2016, Section 529A of the Internal Revenue Code, relating to  
19 qualified ABLE programs, added by Section 102 of Division B of  
20 Public Law 113-295, shall apply, except as otherwise provided.

21 (a) Section 529A of the ~~internal~~ *Internal* Revenue Code is  
22 modified as follows:

23 (1) By substituting the phrase “under Part 10 (commencing with  
24 Section 17001) and this part” in lieu of the phrase “under this  
25 subtitle.”

26 (2) By substituting “Article 2 (commencing with Section  
27 23731)” in lieu of “Section 511.”

28 (b) A copy of the report required to be filed with the Secretary  
29 of the Treasury under Section 529A(d) of the Internal revenue  
30 Code, relating to reports shall be filed with the Franchise Tax  
31 Board at the same time and in the same manner as specified in that  
32 section.

33 SEC. 5. Chapter 15 (commencing with Section 4875) is added  
34 to Division 4.5 of the Welfare and Institutions Code, to read:

35  
36 CHAPTER 15. QUALIFIED ABLE PROGRAM  
37

38 4875. For purposes of this chapter:

39 (a) “ABLE account” or “account” means the account ~~an eligible~~  
40 ~~individual makes contributions to~~ *established and owned by a*

1 *designated beneficiary* pursuant to this chapter for the purpose of  
2 meeting the qualified disability expenses of the designated  
3 beneficiary of the account.

4 (b) ~~“ABLE Fund” or “fund” means the fund established by this~~  
5 ~~chapter for purposes of implementing the federal ABLE Act.~~  
6 *“Administrative fund” means the fund used to administer this*  
7 *chapter.*

8 (c) *“Board” means the California ABLE Act Board established*  
9 *under this chapter.*

10 (d) *“California ABLE Program Trust” or “ABLE program*  
11 *trust” means the trust created pursuant to this chapter.*

12 ~~(e)~~

13 (e) *“Designated beneficiary” means the eligible individual who*  
14 *established an ABLE account and is the owner of the account.*

15 ~~(f)~~

16 (f) *“Eligible individual” means an individual who is eligible*  
17 *under the program for a taxable year if during that taxable year*  
18 *both of the following criteria are met:*

19 (1) *The individual is entitled to benefits based on blindness or*  
20 *disability under Title II or XVI of the federal Social Security Act,*  
21 *and that blindness or disability occurred before the date on which*  
22 *the individual attained 26 years of age.*

23 (2) *A disability certification, as defined in the federal ABLE*  
24 *Act, with respect to the individual is filed pursuant to the*  
25 *requirements set forth in the federal ABLE Act.*

26 ~~(e)~~

27 (g) *“Federal ABLE Act” means the federal Stephen Beck Jr.,*  
28 *Achieving a Better Life Experience Act of 2014.*

29 (h) *“Investment management” means the functions performed*  
30 *by a manager contracted to perform functions delegated by the*  
31 *board.*

32 (i) *“Investment manager” means a manager contracted to*  
33 *perform functions delegated by the board.*

34 (j) *“Program fund” means the program fund established by this*  
35 *chapter, which shall be held as a separate fund within the*  
36 *California ABLE Program Trust.*

37 ~~(f)~~

38 (k) *“Qualified ABLE Program” or “program” means the program*  
39 *established by this chapter to implement the federal ABLE Act*  
40 *pursuant to Section 529A of the Internal Revenue Code.*

(g)

(l) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including expenses related to education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

4876. There is hereby created the *California* ABLE Act Board that consists of the Treasurer, the Director of Finance, the State Controller, the Director of Developmental Services, the chairperson of the State Council on Developmental Disabilities, *the Director of Rehabilitation, and the Chair of the State Independent Living Council, or their designees. designees. The Treasurer shall serve as chair of the board.*

4877. (a) ~~There is hereby established in state government a Qualified ABLE Program and the ABLE Fund for purposes of implementing the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.~~ *created an instrumentality of the State of California to be known as the California ABLE Program Trust.*

(b) ~~The Qualified purposes, powers, and duties of the California ABLE Program shall be administered by the Treasurer, who shall be responsible for ensuring that the program is administered in compliance with the requirements of the federal ABLE Act. Trust are vested in, and shall be exercised by, the board.~~

(c) ~~(1) The ABLE Fund shall accept moneys from all ABLE accounts.~~

~~(2) The Able Act Board shall segregate moneys received by the ABLE Fund into two accounts, which shall be identified as the program account and the administrative account.~~

(A) ~~Notwithstanding Section 13340 of the Government Code, the program account is hereby continuously appropriated, without regard to fiscal years, to the ABLE Act Board for the purposes specified in this act.~~

(B) ~~Notwithstanding Section 13340 of the Government Code, the administrative account is hereby continuously appropriated,~~

1 without regard to fiscal years, to the ABLE Act Board for  
2 administration of the act. Administrative costs shall not exceed 1  
3 percent of the incoming funds for the fiscal year.

4 (d) ~~Funding for startup and first-year administrative costs shall~~  
5 ~~be appropriated from the General Fund in the annual Budget Act.~~  
6 ~~The board shall repay, within five years, the amount appropriated,~~  
7 ~~plus interest calculated at the rate earned by the Pooled Money~~  
8 ~~Investment Account. Necessary administrative costs in future years~~  
9 ~~shall be paid out of the administrative fund pursuant to~~  
10 ~~subparagraph (B) of paragraph (2) of subdivision (c).~~

11 (c) *The board, in the capacity of trustee, shall have the power*  
12 *and authority to do all of the following:*

13 (1) *Sue and be sued.*

14 (2) *Make and enter into contracts necessary for the*  
15 *administration of the ABLE program trust, and engage personnel,*  
16 *including consultants, actuaries, managers, counsel, and auditors,*  
17 *as necessary for the purpose of rendering professional, managerial,*  
18 *and technical assistance and advice.*

19 (3) *Adopt a corporate seal and change and amend it from time*  
20 *to time.*

21 (4) *Cause moneys in the program fund to be held and invested*  
22 *and reinvested.*

23 (5) *Accept any grants, gifts, appropriations, and other moneys*  
24 *from any unit of federal, state, or local government or any other*  
25 *person, firm, partnership, or corporation for deposit to the*  
26 *administrative fund or the program fund. The board may not accept*  
27 *any contribution by any nonpublic entity, person, firm, partnership,*  
28 *or corporation that is not designated for a specified designated*  
29 *beneficiary.*

30 (6) *Enter into agreements with designated beneficiaries or*  
31 *eligible individuals to establish and maintain an ABLE account.*

32 (7) *Make provisions for the payment of costs of administration*  
33 *and operation of the ABLE program trust.*

34 (8) *Carry out the duties and obligations of the ABLE program*  
35 *trust pursuant to this chapter and the federal ABLE Act pursuant*  
36 *to Section 529A of the Internal Revenue Code and federal*  
37 *regulations issued pursuant to that code, and have any other*  
38 *powers as may be reasonably necessary for the effectuation of the*  
39 *purposes, objectives, and provisions of this chapter.*

1 (9) Carry out studies and projections in order to advise  
2 designated beneficiaries or eligible individuals regarding present  
3 and estimated future qualified disability expenses and the levels  
4 of financial participation in the ABLE program trust required in  
5 order to assist designated beneficiaries or eligible individuals.

6 (10) Participate in any other way in any federal, state, or local  
7 governmental program for the benefit of the ABLE program trust.

8 (11) Promulgate, impose, and collect administrative fees and  
9 charges in connection with transactions of the ABLE program  
10 trust, and provide for reasonable service charges, including  
11 penalties for cancellations.

12 (12) Set minimum and maximum investment levels.

13 (13) Administer the funds of the ABLE program trust.

14 (14) Procure insurance against any loss in connection with the  
15 property, assets, or activities of the ABLE program trust.

16 (15) Procure insurance indemnifying any member of the board  
17 from personal loss or liability resulting from a member's action  
18 or inaction as a member of the board.

19 (d) The Treasurer shall, on behalf of the board, appoint an  
20 executive director, who shall not be a member of the board and  
21 who shall serve at the pleasure of the board. The Treasurer shall  
22 determine the duties of the executive director and other staff as  
23 necessary and set his or her compensation. The board may  
24 authorize the executive director to enter into contracts on behalf  
25 of the board or conduct any business necessary for the efficient  
26 operation of the board.

27 ~~4878. Under the program, a person may make contributions~~  
28 ~~for a taxable year, for the benefit of an individual who is an eligible~~  
29 ~~individual for that taxable year, to an ABLE account that is~~  
30 ~~established for the purpose of meeting the qualified disability~~  
31 ~~expenses of the designated beneficiary of the account, if both of~~  
32 ~~the following criteria are met:~~

33 ~~(a) The designated beneficiary is limited to one ABLE account~~  
34 ~~for purposes of this chapter.~~

35 ~~(b) The ABLE account is established only for a designated~~  
36 ~~beneficiary who is a resident of this state.~~

37 ~~4879. Notwithstanding any other law, moneys in, contributions~~  
38 ~~to, and any distribution for qualified disability expenses from, an~~  
39 ~~ABLE account, not to exceed one hundred thousand dollars~~

1 (~~\$100,000~~), shall not count toward determining eligibility for a  
2 state or local means-tested program.

3 ~~4880. (a) The Treasurer may adopt regulations to implement~~  
4 ~~this chapter.~~

5 ~~(b) The Treasurer shall adopt regulations to track all ABLE~~  
6 ~~accounts in California.~~

7 *4878. (a) The board shall segregate moneys received by the*  
8 *ABLE program trust into two funds, which shall be identified as*  
9 *the program fund and the administrative fund.*

10 *(1) Notwithstanding Section 13340 of the Government Code,*  
11 *the program fund is hereby continuously appropriated, without*  
12 *regard to fiscal years, to the ABLE Act Board for the purposes*  
13 *specified in this act.*

14 *(2) The moneys in the administrative fund shall be available for*  
15 *the ABLE Act Board, upon appropriation, for administration of*  
16 *the act. Administrative costs shall not exceed 3 percent of the*  
17 *incoming funds for each fiscal year for the first five fiscal years*  
18 *following the opening of the first ABLE Act account. After the*  
19 *five-year period, administrative costs shall not exceed 1 percent*  
20 *of the incoming funds for each fiscal year.*

21 *(3) Funding for startup and administrative costs for the board*  
22 *shall be provided in the form of a loan from the General Fund*  
23 *sufficient to cover the board's projected administrative costs for*  
24 *its first two years of implementing the program. Once the loan has*  
25 *been expended and revenues from the program are sufficient to*  
26 *cover the board's ongoing costs, the board shall repay, within five*  
27 *years, the amount loaned, plus interest calculated at the rate*  
28 *earned by the Pooled Money Investment Account.*

29 *(b) Not later than 30 days after the close of each month, the*  
30 *investment manager shall place on file for public inspection during*  
31 *business hours a report with respect to investment performance.*  
32 *The investment manager shall report the following information,*  
33 *to the extent applicable, to the board within 30 days following the*  
34 *end of each month:*

35 *(1) The type of investment, name of the issuer, date of maturity,*  
36 *and the par and dollar amount invested in each security,*  
37 *investment, and money within the program fund.*

38 *(2) The weighted average maturity of the investments within the*  
39 *program fund.*



1     (3) Any amounts in the program fund that are under the  
2 management of an investment manager.

3     (4) The market value as of the date of the report and the source  
4 of this valuation for any security within the program fund.

5     (5) A description of the compliance with the statement of  
6 investment policy.

7     (c) Moneys in the program fund may be invested or reinvested  
8 by the Treasurer or may be invested in whole or in part under  
9 contract with an investment manager, as determined by the board.

10    (d) The board shall annually prepare and adopt a written  
11 statement of investment policy. The board shall consider the  
12 statement of investment policy and any changes in the investment  
13 policy at a public hearing. The board shall approve the investment  
14 management entity or entities consistent with subdivision (c).

15    (e) Transfers may be made from the program fund to the  
16 administrative fund for the purpose of paying operating costs  
17 associated with administering the ABLE program trust and as  
18 required by this chapter. All costs of administration of the ABLE  
19 program trust shall be paid out of the administrative fund.

20    (f) All moneys paid by designated beneficiaries or eligible  
21 individuals in connection with ABLE accounts shall be deposited  
22 as received into the program fund, and shall be promptly invested  
23 and accounted for separately. Deposits and interest thereon  
24 accumulated on behalf of designated beneficiaries in the program  
25 fund of the ABLE program trust may be used for qualified disability  
26 expenses.

27    (g) The board shall maintain separate accounting for each  
28 designated beneficiary.

29    (h) Any designated beneficiary may, directly or indirectly, direct  
30 the investment of any contributions to his or her ABLE account,  
31 or any earnings thereon, no more than two times in any calendar  
32 year.

33    (i) The assets of the trust, including the program fund, shall at  
34 all times be preserved, invested, and expended solely and only for  
35 the purposes of the trust and shall be held in trust for the  
36 designated beneficiaries and no property rights therein shall exist  
37 in favor of the state. The assets shall not be transferred or used  
38 by the state for any purposes other than the purposes of the trust  
39 and consistent with the provisions of the federal ABLE Act.

1     4879. (a) Under the program, a person may make contributions  
2     for a taxable year, for the benefit of an individual who is an eligible  
3     individual for that taxable year, to an ABLE account that is  
4     established for the purpose of meeting the qualified disability  
5     expenses of the designated beneficiary of the account if both of  
6     the following criteria are met:

7     (1) The designated beneficiary is limited to one ABLE account  
8     for purposes of this chapter.

9     (2) The ABLE account is established only for a designated  
10    beneficiary who is a resident of this state.

11    (b) A contribution to any ABLE account may only be accepted  
12    if one of the following conditions is met:

13    (1) The contribution is in cash.

14    (2) Except in the case of contributions under Section  
15    529A(c)(1)(C) of the Internal Revenue Code, if the contribution  
16    to an ABLE account would not result in aggregate contributions  
17    from all contributors to the ABLE account for the taxable year  
18    exceeding the amount in effect under Section 2503(b) of the  
19    Internal Revenue Code for the calendar year in which the taxable  
20    year begins.

21    (c) The designated beneficiary shall retain ownership of all  
22    contributions made to the designated beneficiary's ABLE account  
23    to the date of utilization for qualified disability expenses, and all  
24    interest derived from the investment of the contributions to the  
25    designated beneficiary's ABLE account shall be deemed to be held  
26    in the ABLE program trust for the benefit of the designated  
27    beneficiary. Neither the contributions, nor any interest derived  
28    therefrom, may be pledged as collateral for any loan.

29    (d) The board shall develop adequate safeguards to prevent  
30    aggregate contributions on behalf of a designated beneficiary in  
31    excess of the maximum contribution limits necessary to provide  
32    for the qualified disability expenses of the designated beneficiary.  
33    For purposes of this subdivision, aggregate contributions include  
34    contributions under any prior qualified ABLE program of any  
35    state or agency or instrumentality thereof.

36    4880. Notwithstanding any other law, moneys in, contributions  
37    to, and any distribution for qualified disability expenses from, an  
38    ABLE account, not to exceed one hundred thousand dollars  
39    (\$100,000), shall not count toward determining eligibility for a  
40    state or local means-tested program.

1     4881. (a) *The board shall provide an annual listing of*  
2 *distributions to individuals with respect to an interest in an ABLE*  
3 *account to the Franchise Tax Board at a time and in a manner*  
4 *and form as specified by the Franchise Tax Board. The taxpayers'*  
5 *identification numbers obtained in connection with an ABLE*  
6 *account shall be used exclusively for state and federal tax*  
7 *administration purposes.*

8     (b) *The board shall make a report to the appropriate individual*  
9 *of any distribution to any individual with respect to an interest in*  
10 *an ABLE account, at a time and in a form and manner as required*  
11 *by the Franchise Tax Board.*

12     (c) *The board shall report annually to each designated*  
13 *beneficiary all of the following:*

14         (1) *The value of the designated beneficiary's account.*

15         (2) *The interest earned thereon.*

16         (3) *The rate of return of the investments in the designated*  
17 *beneficiary's account for that reporting period.*

18         (4) *Information on investments and qualified disability expenses*  
19 *that designated beneficiaries can use to set savings goals and*  
20 *contribution amounts.*

21     (d) *The board shall provide a means for designated beneficiaries*  
22 *to express concerns or comments regarding the ABLE program*  
23 *trust and any information required to be reported by this section.*

24     4882. (a) *The board shall adopt regulations as it deems*  
25 *necessary to implement this chapter consistent with the federal*  
26 *Internal Revenue Code and regulations issued pursuant to that*  
27 *code to ensure that this program meets all criteria for federal*  
28 *tax-exempt benefits.*

29     (b) *The board may adopt regulations to implement this chapter*  
30 *as emergency regulations in accordance with the rulemaking*  
31 *provisions of the Administrative Procedure Act (Chapter 3.5*  
32 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
33 *2 of the Government Code). The adoption of the regulations shall*  
34 *be deemed to be an emergency and necessary for the immediate*  
35 *preservation of the public peace, health and safety, or general*  
36 *welfare.*

37     4883. *This act shall be construed liberally in order to effectuate*  
38 *its legislative intent. The purposes of this act and all of its*  
39 *provisions with respect to powers granted shall be broadly*

- 1 *interpreted to effectuate the intent and purposes of the federal*
- 2 *ABLE Act and not as a limitation of those powers.*
- 3 *4884. The board shall market this program to residents of the*
- 4 *State of California to the extent funds are available to do so.*